



BILLING CODE: **4510-FP-P**

## **DEPARTMENT OF LABOR**

### **Office of the Secretary**

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Form ETA-9142-B-CAA-3, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019 Public Law 116-6*

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL or Department) is submitting the Employment and Training Administration (ETA)-sponsored Information Collection Request (ICR), titled, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019 Public Law 116-6* (Feb. 15, 2019) (OMB Control Number 1205-0535), to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

**DATES:** OMB will consider all written comments it receives on or before [INSERT DATE 30 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge from the RegInfo.gov website at:

[http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201911-1205-005](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201911-1205-005) (this link will only become active on the day following publication of this notice); by contacting Frederick Licari at

202-693-8073/TTY 202-693-8064 (these are not toll-free numbers); or by sending an email to: DOL\_PRA\_PUBLIC@dol.gov.

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-ETA, Office of Management and Budget, Room 10235, 725 17th Street, NW, Washington, D.C. 20503; by Fax: 202-395-6881 (this is not a toll-free number); or by email: OIRA\_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, NW, Washington, D.C. 20210; or by email: DOL\_PRA\_PUBLIC@dol.gov.

**FOR FURTHER INFORMATION:** Contact Frederick Licari by telephone at 202-693-8073/TTY 202-693-8064 (these are not toll-free numbers) or by sending an email to: DOL\_PRA\_PUBLIC@dol.gov.

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval under the PRA for revisions to Form ETA-9142-B-CAA-3, Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019 Public Law 116-6 (Feb. 15, 2019), which is currently set to expire on November 30, 2019, and all applicable instructions and electronic versions (OMB Control Number 1205-0535). The Department collected information through Form ETA-9142-B-CAA-3 to carry out its statutory and regulatory responsibilities under the H-2B temporary non-agricultural employment-based visa program. Although the form is no longer in use, joint regulations between DOL and the Department of Homeland Security (DHS) require H-2B employers that have filed the form with

DHS to retain the form and maintain records supporting the attestations the employer made on the form.

Before an employer may petition for any temporary skilled or unskilled foreign workers, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the Immigration and Nationality Act (INA) and the Department's implementing regulations, which differ depending on the visa program under which the foreign workers are sought. The H-2B visa program enables employers to bring nonimmigrant foreign workers to the United States to perform nonagricultural work of a temporary or seasonal nature as defined in INA Section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). For purposes of the H-2B program, the INA and governing federal regulations at 20 CFR part 655, Subpart A, and 8 CFR part 214, require the Secretary of Labor to certify that any foreign worker seeking to enter the United States on a temporary basis for the purpose of performing non-agricultural services or labor will not, by doing so, adversely affect wages and working conditions of U.S. workers who are similarly employed. In addition, the Secretary must certify that qualified U.S. workers are not available to perform such temporary labor or services.

On February 15, 2019, the President signed the Consolidated Appropriations Act, 2019. Division H, Section 105 of the Act authorized the Secretary of Homeland Security, in consultation with the Secretary of Labor, to increase the number of H-2B visas available to U.S. employers, notwithstanding the otherwise established statutory numerical limitation. DOL and the Department of Homeland Security (DHS) issued a temporary final rule implementing Division H, Section 105 of the Act on May 8, 2019. This collection of information was required by that rule. The Secretary of Homeland Security, in consultation with the Secretary of Labor, increased the H-2B cap for Fiscal Year (FY) 2019 by up to 30,000 additional visas for American

businesses that were likely to suffer irreparable harm (that is, permanent and severe financial loss) without the ability to employ the H-2B workers requested on their petition. The 30,000 additional visas were available only to workers who were issued an H-2B visa or otherwise granted H-2B status in FY 2016, 2017, or 2018.

The need to quickly issue regulations enacting the provision of the Consolidated Appropriations Act, 2019, caused the Department to seek approval of this information collection through an expedited process. The initial clearance for this information collection was sought using PRA emergency procedures outlined in regulations at 5 CFR 1320.13. Subsequently, the Department has sought public comment to revise this information collection through the notice-and-comment process. The Department proposes: (1) to revise this collection to eliminate the burden associated with completing and submitting the attestations to DHS and the accompanying business harm assessment, as DHS stopped accepting the form once the supplemental H-2B cap was reached and (2) to continue requiring employers to retain the required supporting documentation for three years from the date the certification was issued.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. 5 CFR 1320.6(a). The Department obtains OMB approval for this information collection under Control Number 1205-0535. The current approval is scheduled to expire on November 30, 2019. However, DOL notes that outstanding information collection requirements submitted to OMB receive a month-to-month

extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the *Federal Register* on May 8, 2019, 84 FR 20005.

Interested parties are encouraged to send comments to OMB, Office of Information and Regulatory Affairs, at the address shown in the ADDRESSES section within thirty (30) days of the publication of this notice in the *Federal Register* by [INSERT DATE 30 DAYS FROM PUBLICATION]. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0535. OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* DOL-ETA.

*Title of the Collection:* Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116-6 (Feb. 15, 2019).

*OMB Number:* 1205-0535

*Affected Public:* Private Sector (businesses or other for-profits and not-for-profit

institutions) and State, Local, and Tribal Governments.

*Total Estimated Annual Respondents: 3,776.*

*Annual Frequency: On occasion.*

*Total Estimated Annual Responses: 3,776.*

*Total Estimated Average Time per Response: 0.50 hour.*

*Total Estimated Annual Burden Hours: 1,888 hours.*

*Total Estimated Annual Cost for Respondents: \$87,773.*

AUTHORITY: 44 U.S.C. 3507(a)(1)(D).

DATED: November 20, 2019.

Frederick Licari,

Departmental Clearance Officer.

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